

# **BOARD OF ADJUSTMENT RULES OF PROCEDURE**

Adopted November 21, 1988

Amended: September 15, 1997, October 23, 2003, November 8, 2005, July 13, 2010, March 26, 2013

## **AUTHORITY**

1. These Rules of Procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, and as amended, Chapter 676:1, and the Land Usage By-Laws and Map of the Town of Fitzwilliam, NH.

## **OFFICERS**

1. A Chairman shall be elected annually by a majority vote of the Board in the Month of May. The Chairman shall preside over all meetings and hearings, appoint such committees as directed by the Board and shall affix their signature in the name of the Board.

2. A Vice-Chairman shall be elected annually by a majority vote of the Board in the Month of May. The Vice-Chairman shall preside in the absence of the Chairman and shall have the full powers of the Chairman on matters that come before the Board during the absence of the Chairman.

3. A Clerk shall be elected annually by a majority vote of the Board in the Month of May. The Clerk shall maintain a record of all meetings, transactions and decisions of the Board, and perform such other duties as the Board may direct by resolution.

4. All Officers shall serve until elections are held the following May and shall be eligible for re-election.

## **MEMBERS AND ALTERNATES**

1. Up to three alternate members shall be appointed, as provided for by the local legislative body, and should attend all meetings to familiarize themselves with the workings of the board to stand ready to serve whenever a regular member of the board is unable to fulfill his/her responsibilities.

2. At meetings of the ZBA, alternates who are not activated to fill the seat of an absent or recused member or who have not been appointed by the chair to temporarily fill the unexpired term of a vacancy may participate with the board in a limited capacity. During a public hearing, alternates may sit at the table with the regular members and may view documents, listen to testimony, ask questions and interact with other board members, the applicant, abutters and the public. Alternates shall not be allowed to make or second motions. Once the board moves into deliberations, alternates shall remove themselves from the table and no longer participate with the board. During

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work sessions or portions of meetings that do not include a public hearing, alternates may fully participate, exclusive of any motions or votes that may be made. At all times, the chair shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application. [October 2012]

3. Members must reside in the community and are expected to attend each meeting of the board to exercise their duties and responsibilities. Any member unable to attend a meeting shall notify the chairman as soon as possible. Members, including the chairman and all officers, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.

## **MEETINGS**

1. Meetings shall be held at the Fitzwilliam Town Hall at 7:00 PM on the second Tuesday of the month when there are applications before the Board. The Chairman may cancel or postpone a meeting. Other meetings may be held at the request of the Chairman, Vice-Chairman or Three (3) Members, provided notice is given to each Member and is posted at the Fitzwilliam Town Hall and Post Office at least 48 hours prior to the time of such Meeting.

2. Quorum. A quorum for all Meetings of the Board shall be three (3) Members, including Alternates sitting in place of Members. RSA 674:33, III provides that "...the concurring vote of three (3) members of the Board shall be necessary to reverse any action of an administrative official or to decide in favor of any appeal..." For this reason, the Board will make every effort to ensure that a full five (5) Member Board is present for the consideration of any appeal. If any regular Board Member is absent from any meeting or hearing, or disqualifies him/herself from sitting on a particular Case, the Chairman shall designate one of the Alternate Members to sit in place of the absent or disqualified member, and such Alternate shall be in all respects a full Member of the Board while so sitting.

Should, at a Public Hearing, there be only three (3) or four (4) Members present, including Alternates sitting in place of Members, the Chairman must give the Applicant the option of postponing the Hearing until all Members are present. If the Applicant chooses to proceed with the Hearing, she or he must be advised that a Hearing before a three (3) or four (4) Member Board will not be grounds for a Re-Hearing in the event the application is denied. If a Hearing on a Case is continued to another meeting or meetings, any Alternates who sat in for a Board Member or Members should continue to replace that Board Member or Members on the Case until it is completed.

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**Disqualification.** If Members find it necessary to disqualify themselves from sitting in a particular Case, as provided in RSA 673:14, they shall notify the Chairman as soon as possible so that an Alternate may be requested to sit in their place. When there is uncertainty as to whether a member should be disqualified to act on a particular application, that Member or another Member of the Board may request the Board to vote on the question of disqualification. Any such request shall be made before the public hearing gets underway.

The disqualification shall be announced by either the Chairman or Member disqualifying him/herself before the beginning of the public hearing on the Case. The disqualified Member shall move away from the Board table during the public hearing and during all deliberation on the Case.

**Order of Business.** The Order of Business for regular meetings shall be as follows:

- A. Roll Call by the Clerk
- B. Public hearings
- C. Minutes of previous meeting
- D. Unfinished business
- E. New business
- F. Communications and Miscellaneous
- G. Adjournment

### **APPLICATION/DECISION**

#### **1. Applications**

A. Each application for a hearing before the Board shall be made on forms provided by the Board and shall be presented to the Land Use Administrative Assistant who shall record the date of receipt and collect application fee and abutter notification fees. Appeals from an Administrative Decision taken under RSA 676:5 shall be filed within thirty (30) days of the decision.

B. Site walk. The Board may schedule a site walk.

C. The Board shall hold a Public Hearing no later than thirty (30) days after the filing of an application. The Board shall have the power to continue a Public Hearing if it determines that such continuance is necessary to allow the applicant to provide information of an unusual nature and which is not otherwise required as part of the application.

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D. All forms and revisions prescribed shall be adopted by resolution of the Board and shall become part of these rules of procedure.

### **2. Public Notice**

A. Public Notice of public hearings on each application shall be given in a newspaper of general circulation in Cheshire County acceptable to the Board and shall be posted in the Fitzwilliam Town Hall and in the Fitzwilliam Post Office not less than five (5) days before the date fixed for the hearing. Notice shall include the name of the applicant, description of property to include tax map identification, action desired by the applicant, provisions of the zoning ordinance concerned, the type of appeal being made and the date, time and place of the hearing.

B. Personal notice shall be made by certified mail to the applicant and all abutters not less than five (5) days before the date of the hearing. Notice shall also be given to the Planning Board, Town Clerk and other parties deemed by the Board to have special interest. Said notice shall contain the same information as the public notice and shall be made on forms provided for this purpose.

### **3. Public Hearing.** The conduct of Public Hearings shall be governed by the following rules:

A. The Chairman shall call the Hearing in session and read the application and report on how Public Notice and personal notice were given.

B. The Board will verify the application is complete.

C. Members of the Board and Alternates may ask questions at any point during testimony.

D. Persons who appear shall be required to state their name and address and indicate whether they are party to the Case or an agent or counsel of a party to the Case.

E. Any member of the Board, through the Chairman, may request any party to the Case to speak again.

F. Any party to the Case who wants to ask a question of another party to the Case must do so through the Chairman.

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G. The applicant shall be called to present the appeal and those appearing in favor of the appeal shall be allowed to speak.

H. Those in opposition to the appeal shall be allowed to speak.

I. The applicant and those in favor shall be allowed to speak in rebuttal.

J. Those in opposition to the appeal shall be allowed to speak in rebuttal.

K. Any person who wants the Board to request the attendance of a witness shall present his request in writing to the Chairman not later than three (3) days prior to the Public Hearing.

L. The Board of Adjustment will hear with interest any evidence that pertains to the facts of the Case or how the facts relate to the provisions of the Fitzwilliam Land Usage By-Laws and State Zoning Law.

M. The Chairman shall present a summary setting forth the facts of the Case and the claims made for each side. Opportunity shall be given for correction from the floor.

N. The Hearing on the appeal shall be declared closed, and the Board will deliberate and decide the case, or announce a continuation of the hearing at a date and time certain.

4. Decisions. The Board shall decide all Cases within fourteen (14) days of the Public Hearing. The Board will approve, approve with conditions, deny the appeal, or defer its decision. Notice of the decision or deferral will be made available for public inspection within five (5) business days. If the appeal is denied or deferred, the notice shall include the reasons therefor.

5. Voting. The chairman may assign the task of drafting a motion to a board member who shall bring a draft motion to the board at the continuation of the deliberative portion of the meeting for the consideration of the board. Should a motion result in a tie or not receive the necessary 3 votes to decide in favor of the applicant, the opposite of the failed motion does not automatically prevail. The board must put forth a new motion to affirmatively set forth a decision.

6. Reconsideration by the Board. The board may reconsider a decision to grant an application or grant or deny a motion for rehearing provided such reconsideration is within the appeal period of the original decision as per 74 Cox Street LLC v City of Nashua, September 21, 2007. Motions for Rehearing can only be received in the Land Use Office during normal business hours.

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7. Motions for Rehearing. If the board grants a motion for rehearing, the new public hearing shall be held within 30 days of the decision to grant the rehearing provided all notice fees are paid and an updated abutter list is submitted by the party requesting the rehearing. Notification of the rehearing shall follow the procedures set forth in RSA 676:7. [October 2012]

## RECORDS

The records of the Board shall be kept by the Land Use Administrative Assistant and made available for public inspection at the Fitzwilliam Town Hall in accordance with statutory requirements.

1. Final written decisions will be placed on file and available for public inspection within five (5) business days after the decision is made, pursuant to RSA 676:3.
2. Minutes of all meetings including names of Board Members, persons appearing before the Board, and a brief description of the subject matter shall be open to public inspection within five (5) business days of the public meeting. RSA 91-A:2, II.

## AMENDMENTS

These Rules of Procedure may be amended by a majority vote of the Members of the Board provided that such new rules or amendments are proposed and discussed prior to the meeting at which the vote is to be taken and shall be placed on file with the town clerk and be available for public inspection pursuant to RSA 676:1.

## WAIVERS

Any portion of these rules of procedure may be waived in such cases where, in the opinion of the board, strict conformity would pose a practical difficulty to the applicant and waiver would not be contrary to the spirit and intent of the rules.

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